

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC INVESTIGATION INTO VALLEY)	
GAS, INC. FOR AN ALLEGED FAILURE TO)	CASE NO.
COMPLY WITH COMMISSION ORDERS AND)	2023-00331
KRS 278.160)	

ORDER

On October 26, 2023,¹ the Commission opened an investigation into Valley Gas, Inc. (Valley Gas), pursuant to KRS 278.160, KRS 278.250, KRS 278.260, KRS 278.270, and KRS 278.990, to investigate alleged violations of previous Commission Orders in Case Nos. 2020-00085² and 2014-00368,³ and the statutory requirements of KRS 278.160.

LEGAL STANDARD

Pursuant to KRS 278.040, the Commission has exclusive jurisdiction over the rates and service of utilities and is charged with enforcing the provisions of KRS Chapter 278.⁴ Each utility is required to file with the Commission a schedule of all rates and conditions

¹ Opening Order (Ky. PSC Oct. 26, 2023).

² Case No. 2020-00085, *Electronic Emergency Docket Related to the Novel Coronavirus COVID-19* (Ky. PSC Sept. 21, 2020), Order at 7 (finding that late fees shall not be assessed on any past due residential amounts accrued between March 16, 2020, and December 31, 2020, following the December 31, 2020 deadline).

³ Case No. 2014-00368, *Valley Gas, Inc. Request for Approval of a Special Contract with Mago Construction Company and a Deviation from the Gas Cost Adjustment Clause* (Ky. PSC Oct. 28, 2014).

⁴ KRS 278.040(1), (2).

for service.⁵ KRS 278.160 codifies the “filed rate doctrine,” which requires a utility to file with the Commission “schedules showing all rates and conditions for service established by it and collected and enforced.”⁶ It further states:

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.⁷

Under KRS 278.250 and KRS 278.260, the Commission is authorized to investigate and examine the condition of any utility subject to its jurisdiction, including any practice or act relating to the utility’s service.

Under KRS 278.270, whenever the Commission, upon its own motion or upon complaint as provided in KRS 278.260, and after a hearing had upon reasonable notice, finds that any rate is unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of KRS Chapter 278, the Commission shall by order prescribe a just and reasonable rate to be followed in the future.

Upon a finding of a willful violation of any provision of KRS Chapter 278, Commission regulations, or a Commission Order, KRS 278.990 authorizes the Commission to assess civil penalties not to exceed \$2,500 for each offense against a utility and against any officer, agent, or employee of a utility who willfully violates any provisions of KRS Chapter 278, Commission regulations, or orders. The Commission has defined willful behavior as follows:

⁵ KRS 278.160(1).

⁶ KRS 278.160(1).

⁷ KRS 278.160(2).

A willful violation has been defined as an act that is committed intentionally, not accidentally or involuntarily. It has also been stated that a willful violation does not necessarily and solely entail an intention to do wrong and inflict injury but may include conduct which reflects an indifference to its natural consequences. For civil and administrative proceedings, a willful violation has been explained as one which is intentional, knowing, voluntary, deliberate or obstinate, although it may be neither malevolent nor with the purpose to violate the law.⁸

BACKGROUND

Valley Gas is a local gas distribution company (LDC) that provides retail natural gas in and around the city of Irvington in Breckinridge County, Kentucky.⁹ Valley Gas served 421 residential customers, 49 commercial customers and 1 industrial customer as of the end of 2023.¹⁰ Valley Gas has a single rate class for general service, which includes all residential, commercial, and industrial customers. Valley Gas service includes a monthly \$15.85 customer charge and a per MCF base rate and gas cost charge.¹¹

During the pendency of Case No. 2022-00315,¹² the Commission became aware of four separate issues that warranted further investigation. First, Valley Gas had been

⁸ Case No. 2021-00339, *Electronic Alleged Failure of North Manchester Water Association, Inc., Its Officers, Steve Davis, Bill Hurd, Carl Gregory Hoskins, Bobby Wolfe, Henry Smith, Ted Woods, Carl David Crawford, and Its Manager, Jerry Rice, to Comply with KRS 278.140, KRS 278.230, 807 KAR 5:006, Sec. 4, and KRS 278.990* (Ky. PSC Mar. 7, 2023), Order at 6 (citations omitted).

⁹ *Annual Report of Valley Gas for the Calendar Year Ended December 31, 2023* (2023 Annual Report) at 9.

¹⁰ 2023 Annual Report at 26.

¹¹ P.S.C. Ky. 120th Revised Sheet No. 1 (issued Sept. 14, 2023), effective Oct. 14, 2023 [Misnumbered as 120th Revised Sheet instead of 121st]. Customer charge was \$15 at the time the special contract took effect. See P.S.C. Ky. 86th Revised Sheet No. 1 (issued June 30, 2014), effective July 4, 2014. The \$15.85 monthly customer charge took effect August 18, 2023. See P.S.C. Ky. 120th Revised Sheet No. 1 (issued Aug. 18, 2023), effective Aug. 18, 2023.

¹² Case No. 2022-00315, *Electronic Application of Valley Gas, Inc. for an Alternative Rate Adjustment* (Ky. PSC Aug. 18, 2023).

charging its industrial customer, Mago Construction Company (Mago), rates that were not set forth either in its current special contract with Mago or appearing in Valley Gas's current tariff on file with the Commission. Under the terms of the special contract, Valley Gas entered with Mago and approved by the Commission in Case No. 2014-00368,¹³ Mago should have been charged Valley Gas's tariffed rates, which include the monthly customer charge, the quarterly Gas Cost Recovery (GCR) rate, and the \$3.0061 per Mcf¹⁴ base rate usage rate in place at that time. Instead, starting in April 2015, Valley Gas charged Mago a monthly \$489 meter charge rate, the quarterly GCR rate, and the tariffed base rate usage rate.¹⁵

Second, the Commission became aware that Valley Gas charged certain customers an amount different from the Special Charges approved in its tariff¹⁶ Specifically, Valley Gas charged a number of customers \$40 for Reconnection Charges instead of the tariff approved \$43 and undercharged one customer \$15 instead of \$25 for a Returned Check Charge.

¹³ Case No. 2014-00368, *Valley Gas, Inc. Request for Approval of a Special Contract with Mago Construction Company and a Deviation from the Gas Cost Adjustment Clause* (Ky. PSC Oct. 28, 2014), Order.

¹⁴ The usage rate of \$3.0061 per Mcf was in effect beginning on November 5, 2013, and has since been increased to \$3.1821 per Mcf as approved by the Commission's final Order in Case No. 2022-00315 for services rendered by Valley Gas on and after August 18, 2023.

¹⁵ Valley Gas Response to Commission's Order (Response to Commission's Order) (filed Nov. 15, 2023) at 4.

¹⁶ P.S.C. Ky. Original Sheet No. 1.1 (issued Nov. 7, 2013), effective Nov. 5, 2013. The Reconnection Charge was later lowered to \$25. See P.S.C. Ky. 1st Revised Sheet No. 1.1 (issued Aug. 18, 2023), effective Aug. 18, 2023.

Third, Valley Gas charged residential forfeited discounts (late fees) that were possibly billed in error and contrary to a Commission Order issued in Case No. 2020-00085.¹⁷

Finally, the Commission found that an investigation into Valley Gas's GCR rate report was necessary to determine the amount of purchased gas cost revenue that had been under- or over-collected as a result of Mago's gas supply costs omission from the GCR rate calculation in Case No. 2018-00089,¹⁸ despite Valley Gas billing Mago for gas costs separately. Finally, the Commission ordered Valley Gas to show cause why it should not be sanctioned pursuant to KRS 278.990 for violating KRS 278.160(2) and the Commission's Orders in Case Nos. 2014-00368 and 2020-00085.¹⁹

In its response to the Commission's November 15, 2023 Order opening this investigation,²⁰ Valley Gas offered the following responses to show cause, along with a proposed resolution.

Special Contract Between Valley Gas and Mago

Valley Gas acknowledged its improper assessment of a \$489 monthly customer charge to Mago Construction Company without filing the charge in its rate schedule or obtaining prior approval from the Commission as required by KRS 278.160(2).²¹ Valley Gas asserted that this charge was intended to cover costs associated with servicing

¹⁷ Case No. 2020-00085, (Ky. PSC Mar. 16, 2020), Order at 3, finding that late fees would be waived for 30 days on past due residential bills for amounts; (Ky. PSC Sept. 21, 2020), Order at 7, extending the waiver until December 31, 2020.

¹⁸ Case No. 2018-00089, *Purchased Gas Adjustment Filing of Valley Gas, Inc.* (filed Mar. 5, 2018).

¹⁹ Opening Order at 4.

²⁰ Response to Commission's Order.

²¹ Response to Commission's Order at 4–5.

Mago, its only industrial customer, but was imposed outside of regulatory compliance due to Valley Gas's lack of awareness of the statute.²² Valley Gas stated that it now recognizes that a mutual agreement with a customer does not exempt the utility from statutory obligations and acknowledges that ignorance of the law is not a defense.²³

Valley Gas ceased collecting the \$489 charge as of November 15, 2023, and acknowledged a refund obligation of \$28,980 to Mago, covering the improper charges for the past five years, minus standard charges of \$15 per month. Valley Gas requested to refund this amount over a three-year period due to its limited financial resources.²⁴

Valley Gas has since executed an amendment to its special contract with Mago, including the \$489 charge. Valley Gas' special contract with Mago was ultimately approved in Case No. 2023-00402.²⁵

Reconnection and Returned Check Charges (Nonrecurring Charges)

Valley Gas acknowledged that it assessed charges for returned checks and service reconnections that were lower than those approved in its filed tariff, in violation of KRS 278.160(1).²⁶ Specifically, Valley Gas undercharged one customer \$10, by charging them \$15 instead of \$25, for a Returned Check Charge and undercharged 17 customers, when it charged \$40 instead of \$43, for Reconnection Charges, resulting in a total

²² Response to Commission's Order at 4–5.

²³ Response to Commission's Order at 5.

²⁴ Response to Commission's Order at 6.

²⁵ Case No. 2023-00402, *Electronic Tariff Filing of Valley Gas, Inc. of An Amendment to a Special Contract with Mago Construction Company* (Ky. PSC June 27, 2024), Order.

²⁶ Response to Commission's Order at 7.

underbilling of \$61 across 18 customers.²⁷ Valley Gas denied that these violations were willful, explaining that employees relied on memory when billing nonrecurring charges instead of consulting the filed rate schedules. However, Valley Gas admitted that this does not excuse the violations and acknowledged that it was inconsistent with good business practices.²⁸

To prevent future violations, Valley Gas stated that it has taken steps to ensure compliance with KRS 278.160, including making a physical copy of its tariff available in its shared office space with Irvington Gas, instructing employees to consult the tariff before assessing fees, and adding a hyperlink to the tariff on its website. Additionally, Valley Gas stated it has created a reference document to be displayed in its office for employees to easily access the correct charges.²⁹

Given the minimal amount underbilled, the time elapsed, expected customer resistance, and the administrative costs of collection, Valley Gas did not propose to recover the underbilled amounts, believing the cost of collection would exceed the amount underbilled.³⁰

Residential Late Fees

Valley Gas acknowledged that it improperly assessed \$3,473.41 in late payment fees to residential customers between March 16, 2020, and December 31, 2020, in

²⁷ Response to Commission's Order at 7.

²⁸ Response to Commission's Order at 7.

²⁹ Response to Commission's Order at 7.

³⁰ Response to Commission's Order at 7–8.

violation of the Commission's Orders in Case No. 2020-00085.³¹ Valley Gas explained that it refrained from issuing refunds due to a mistaken belief that the Commission would issue specific instructions regarding the refunds.³² Valley Gas argued that this delay was not an attempt to avoid making refunds but resulted from a misunderstanding of the process.

Valley Gas stated it is now prepared to refund the improperly charged late fees to the impacted customers and requests that the Commission allow these refunds to be made over a three-month period due to the company's limited cash reserves.³³

GCR Rate Report

Valley Gas asserted that, to the best of its knowledge, the GCR reports submitted since September 30, 2015, are accurate and comply with guidance provided by Commission Staff in an email exchange dated September 23, 2015.³⁴ Valley Gas asserted that any inaccuracies, if present, were unintentional and not meant to mislead or misrepresent sales volumes or costs. Valley Gas acknowledged that prior to September 23, 2015, it erroneously included Mago's gas volumes and costs in its GCR³⁵

³¹ Case No. 2020-00085, Mar. 16, 2020 Order at 3, finding that late fees would be waived for 30 days on past due residential bills for amounts; Sept. 21, 2020 Order at 7, extending the waiver until December 31, 2020.

³² Response to Commission's Order at 8.

³³ Response to Commission's Order at 8.

³⁴ Response to Commission's Order at 8–9.

³⁵ In its Response to Commission's Order, Valley Gas uses the term Gas Cost Adjustment or GCA. The term Gas Cost Recovery or "GCR" is interchangeable with Gas Cost Adjustment "GCA"; and Purchased Gas Adjustment "PGA". For the sake of consistency, the Commission uses "GCR" in its final Orders unless otherwise stated. The Commission also universally reports the usage rate for natural gas using Mcf.

filings. Valley Gas argued that Commission Staff identified this issue and assisted Valley Gas in recalculating the figures, providing revised reports to correct the mistake.³⁶

Valley Gas admitted that its employees have limited experience and training in preparing GCR filings and have relied heavily on Commission Staff's guidance. Despite this reliance, Valley Gas stated that it recognized that misunderstandings may have occurred, leading to potential errors in its filings.³⁷

Valley Gas stated that it is committed to fully cooperating with the Commission's investigation into the accuracy of its GCR filings and will provide any necessary information to ensure compliance with Commission requirements.³⁸

DISCUSSION AND FINDINGS

Based upon the case record, the Commission finds that Valley Gas committed multiple violations of the filed rate doctrine, KRS 278.160, and the Commission's Order in Case No. 2020-00085.

Based on Valley Gas's admission, the Commission finds Valley Gas violated KRS 278.160 for charging Mago a meter fee greater than what was permitted under the filed and approved special contract. The Commission notes that Valley Gas was aware of the terms of the special contract it filed and willfully disregarded those terms. A utility's indifference to its legal obligations may be considered willful, regardless of any lack of purpose to violate the law.³⁹ Over the five-year period preceding this matter, Valley Gas

³⁶ Response to Commission's Order at 8–9.

³⁷ Response to Commission's Order at 9.

³⁸ Response to Commission's Order at 9.

³⁹ See Case No. 2021-00339, Mar. 7, 2023 Order at 6.

issued 60 bills to Mago and therefore committed 60 violations. Valley Gas may be subject to civil penalties for up to \$2,500 for each of 60 violations.⁴⁰ The Commission has applied the five-year statute of limitations for refunds as set forth in KRS 413.120(2),⁴¹ consistent with established precedent.⁴² Valley Gas is ordered to refund Mago \$28,980, representing the amount over-recovered from Mago during the five-year period preceding the opening Order of this investigation, dated October 26, 2023. Valley Gas has requested a three-year period to pay the refund due to current cash flow limitations. The Commission finds this request reasonable and therefore, grants the requested three-year period for payment.

Regarding the nonrecurring charges, the Commission finds Valley Gas in violation of KRS 278.160 for failing to properly charge rates as outlined in its filed tariff. Valley Gas admitted to 18 nonrecurring charge violations. The Commission notes that Valley Gas's conduct was willful, as it failed to instruct its employees and failed to collect nonrecurring charges in amount consistent with its filed tariff. Valley Gas is subject to civil penalties for up to \$2,500 each for each of 18 violations. However, due to the de minimis under-collection amount, the Commission finds that Valley Gas should not be required to collect the under-collected amounts.

⁴⁰ KRS 278.990.

⁴¹ KRS 413.120(2) states that "an action upon a liability created by statute has a 5-year statute of limitations when no other time is fixed by the statute creating the liability." Therefore, this investigation is limited to that period.

⁴² Case No. 2000-00379, *The Harbor at Harrods Creek Condominium Association vs. Fourth Avenue Corporation - Long Corporation, Joint Venture D/B/A Shadow Wood Subdivision Sewer Service* (Ky. PSC June 6, 2002), Order.

Regarding the erroneous late fees charged to customers, the Commission finds Valley Gas in violation of the Commission's Order in Case No. 2020-00085⁴³ and Valley Gas shall issue refunds of late fees collected in violation of that Order, totaling \$3,473.41. Valley Gas ceased collecting late fees after the Commission emphasized the late fee moratorium in the Order in Case No. 2020-00085.⁴⁴ Valley Gas has requested three months to issue the refunds due to current cash flow limitations. The Commission finds that the requested three-month period for payment is reasonable.

However, the Commission does not find the violations specifically related to erroneous late fees to be willful. Although all jurisdictional utilities were provided written notice of the late fee moratorium Order, the record in Case No. 2020-00085 does not reflect confirmation of this notice to Valley Gas.

Regarding the GCR rate report, the Commission acknowledges that Valley Gas currently has two other GCR cases pending before the Commission, Case Nos. 2023-00385⁴⁵ and 2024-00175,⁴⁶ in which its methodology for calculating the GCR rate is also under review. Given that this issue is recurring in multiple cases, the Commission finds that an examination of the methodology in this case would introduce unnecessary confusion and is outside the scope of this proceeding. Therefore, the Commission finds that the correct calculation of the GCR rate will be determined in Valley Gas' other

⁴³ Case No. 2020-00085, Mar. 16, 2020 Order at 3; Sept. 21, 2020 Order at 7.

⁴⁴ Case No. 2020-00085, Mar. 16, 2020 Order at 3; Sept. 21, 2020 Order at 7.

⁴⁵ Case No. 2023-00385, *Electronic Purchased Gas Adjustment Filing of Valley Gas, Inc.* (filed Nov. 24, 2023).

⁴⁶ Case No. 2024-00175, *Electronic Purchased Gas Adjustment Filing of Valley Gas, Inc.* (filed May 30, 2024).

pending cases. The Commission makes no finding regarding whether Valley Gas incorrectly calculated its GCA.

The Commission finds that Valley Gas has committed 78 willful violations, with each violation subject to a maximum civil penalty of \$2,500 for each violation. The Commission finds that Valley Gas should be assessed a civil penalty of \$25,000, with the entirety of this sum being suspended, contingent on Valley Gas fulfilling its obligation to issue refunds and committing no additional willful billing violations within the next five years.

IT IS THEREFORE ORDERED that:

1. Valley Gas refund \$28,980 to Mago for meter fee overcharges at a rate no less than 36 equal monthly installments beginning no later 30 days of the service of this Order.
2. Valley Gas is ordered to refund \$3,473.41 in erroneously collected late fees to affected customers within 90 days of service of this Order. Valley Gas shall make reasonable efforts to locate any customers due refunds who are no longer Valley Gas customers. Valley Gas shall comply with KRS Chapter 393A regarding unclaimed property.
3. For the reasons set forth above, Valley Gas is assessed a civil penalty of \$25,000, suspended in total, if Valley Gas complies with this Order regarding its obligation to issue refunds and commits no further willful billing violations within five years of service of this Order.
4. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION



Chairman



Commissioner



Commissioner



ATTEST:



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